

104TH CONGRESS
1ST SESSION

H. R. 555

To amend the Securities Exchange Act of 1934 in order to reform the conduct of private securities litigation, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 18, 1995

Mr. MARKEY (for himself, Mr. CONYERS, Mr. NADLER, Mr. KENNEDY of Massachusetts, and Mrs. SCHROEDER) introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

MARCH 29, 1995

Additional sponsors: Mr. ENGEL, Mr. FILNER, Mr. MARTINEZ, Mr. FOLEY, Mr. FOGLIETTA, and Mr. BERMAN

Deleted sponsor: Mr. DEUTSCH (added February 3, 1995; deleted February 13, 1995)

A BILL

To amend the Securities Exchange Act of 1934 in order to reform the conduct of private securities litigation, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Private Securities Liti-
3 gation Reform Act of 1995”.

4 **TITLE I—PRIVATE SECURITIES**
5 **LITIGATION**

6 **SEC. 101. ELIMINATION OF CERTAIN ABUSIVE PRACTICES**
7 **AND PROCEDURAL REFORMS.**

8 (a) RECEIPT FOR REFERRAL FEES.—Section 15(c)
9 of the Securities Exchange Act of 1934 (15 U.S.C. 78o(c))
10 is amended by adding at the end the following new para-
11 graph:

12 “(8) RECEIPT OF REFERRAL FEES.—No broker
13 or dealer, or person associated with a broker or deal-
14 er, may solicit or accept remuneration for assisting
15 an attorney in obtaining the representation of any
16 customer in any implied private action arising under
17 this title.”.

18 (b) PROHIBITION ON ATTORNEYS’ FEES PAID FROM
19 COMMISSION DISGORGEMENT FUNDS.—Section 21(d) of
20 the Securities Exchange Act of 1934 (15 U.S.C. 78u(d))
21 is amended by adding at the end the following new para-
22 graph:

23 “(4) PROHIBITION ON ATTORNEYS’ FEES PAID
24 FROM COMMISSION DISGORGEMENT FUNDS.—Except
25 as otherwise ordered by the court, funds disgorged
26 solely as the result of an action brought by the Com-

1 mission in Federal court, or of any Commission ad-
2 ministrative action, shall not be distributed as pay-
3 ment for attorneys' fees or expenses incurred by pri-
4 vate parties seeking distribution of the disgorged
5 funds.'".

6 (c) ADDITIONAL PROVISIONS APPLICABLE TO CLASS
7 ACTIONS.—Section 21 of the Securities Exchange Act of
8 1934 (15 U.S.C. 78u) is amended by adding at the end
9 the following new subsections:

10 “(i) RECOVERY BY NAMED PLAINTIFFS IN CLASS
11 ACTIONS.—In an implied private action arising under this
12 title that is certified as a class action pursuant to the Fed-
13 eral Rules of Civil Procedure, the share of any final judg-
14 ment or of any settlement that is awarded to class plain-
15 tiffs serving as the representative parties shall be cal-
16 culated in the same manner as the shares of the final judg-
17 ment or settlement awarded to all other members of the
18 class. Nothing in this subsection shall be construed to
19 limit the award to any representative parties of reasonable
20 compensation, costs, and expenses (including lost wages)
21 relating to the representation of the class.

22 “(j) CONFLICTS OF INTEREST.—In an implied pri-
23 vate action arising under this title that is certified as a
24 class action pursuant to the Federal Rules of Civil Proce-
25 dure, if a party is represented by an attorney who directly

1 owns or otherwise has a beneficial interest in the securities
2 that are the subject of the litigation, the court shall make
3 a determination of whether such interest constitutes a con-
4 flict of interest sufficient to disqualify the attorney from
5 representing the party.

6 “(k) RESTRICTIONS ON SECRECY.—

7 “(1) RESTRICTIONS ON SETTLEMENTS UNDER
8 SEAL.—In an implied private action arising under
9 this title, the terms and provisions of any settlement
10 agreement between any of the parties shall not be
11 filed under seal, except that on motion of any of the
12 parties to the settlement, the court may order filing
13 under seal for those portions of a settlement agree-
14 ment as to which good cause is shown for such filing
15 under seal. Good cause shall only exist if publication
16 of a term or provision of a settlement agreement
17 would cause direct and substantial harm to any per-
18 son.

19 “(2) RESTRICTIONS ON PROTECTIVE ORDERS
20 AND SEALING OF CASES.—In an implied private ac-
21 tion arising under this title, a court may enter an
22 order restricting the disclosure of information ob-
23 tained through discovery or an order restricting ac-
24 cess after entry of final judgment to court records
25 only after making particularized findings of fact that

1 such disclosure or access would cause direct, imme-
2 diate, and substantial harm to the competitive or
3 privacy interests of a person.

4 “(3) BURDEN OF PROOF.—The party who is
5 the proponent for the entry of an order, as provided
6 under this subsection, shall have the burden of proof
7 in obtaining such an order.

8 “(4) DISCLOSURE TO CONGRESS OR GOVERN-
9 MENT AGENCIES.—

10 (A) No agreement between or among par-
11 ties in an implied private action arising under
12 this title may contain a provision that prohibits
13 or otherwise restricts a party from disclosing
14 any information relevant to such action to Con-
15 gress or to any Federal or State agency with
16 authority to enforce laws regulating an activity
17 relating to such information.

18 “(B) Any disclosure of information to Con-
19 gress or to a Federal or State agency as de-
20 scribed under subparagraph (A) shall be con-
21 fidential to the extent provided by law.

22 “(I) PRESERVATION OF EVIDENCE.—Upon receiving
23 actual notice of the filing of a complaint in an implied
24 private action arising under this title that names a person
25 as a defendant in such action and that contains allegations

1 concerning the conduct of such person, such person shall
2 not willfully destroy any documents, data compilations (in-
3 cluding any electronically recorded or stored data), or tan-
4 gible objects that are in the custody or control of such
5 person and that a reasonable person would consider rel-
6 evant to the allegations in the complaint. Any defendant
7 that does not comply with this subsection shall be sanc-
8 tioned, which sanction may include having judgment en-
9 tered against it.

10 “(m) PAYMENT OF ATTORNEYS’ FEES FROM SET-
11 TLEMENT FUNDS.—In an implied private action arising
12 under this title that is certified as a class action pursuant
13 to the Federal Rules of Civil Procedure, attorneys’ fees
14 awarded by the court from a common fund for the class
15 to counsel for the class shall be determined based on (1)
16 a reasonable percentage of amount actually paid to class
17 members from the common fund, and (ii) any other bene-
18 fits available to the class, plus reasonable expenses in-
19 curred in the prosecution of the action.

20 “(n) DISCLOSURE OF SETTLEMENT TERMS TO
21 CLASS MEMBERS.—In an implied private action arising
22 under this title that is certified as a class action pursuant
23 to the Federal Rules of Civil Procedure, a proposed settle-
24 ment agreement that is published or otherwise dissemi-
25 nated to the class shall include the following statements,

1 which shall not be admissible for purposes of any Federal
2 or State judicial or administrative proceeding:

3 “(1) STATEMENT OF THE BENEFITS OF SET-
4 TLEMENT.—A statement of the total amount of the
5 settlement, fully describing all proposed payments
6 and non-monetary benefits to the class, and a sched-
7 ule setting forth the reasonably anticipated per
8 share payments to class members.

9 “(2) STATEMENT OF POTENTIAL OUTCOME OF
10 CASE.—

11 “(A) AGREEMENT ON AMOUNT OF DAM-
12 AGES AND LIKELIHOOD OF PREVAILING.—If the
13 settling parties agree on the amount of dam-
14 ages per share that would be recoverable if the
15 plaintiff prevailed on each claim alleged under
16 this title and the likelihood that the plaintiff
17 would prevail—

18 “(i) a statement concerning the
19 amount of such potential damages; and

20 “(ii) a statement concerning the likeli-
21 hood that the plaintiff would prevail on the
22 claims alleged under this title and a brief
23 explanation of the reasons for that conclu-
24 sion.

1 “(B) DISAGREEMENT ON AMOUNT OF
2 DAMAGES OR LIKELIHOOD OF PREVAILING.—If
3 the parties do not agree on the amount of dam-
4 ages per share that would be recoverable if the
5 plaintiff prevailed on each claim alleged under
6 this title or on the likelihood that the plaintiff
7 would prevail on those claims, or both, a state-
8 ment from each settling party concerning the
9 issue or issues on which the parties disagree.

10 “(3) STATEMENT OF ATTORNEYS’ FEES OR
11 COSTS SOUGHT.—If any of the settling parties or
12 their counsel intend to apply to the court for an
13 award of attorneys’ fees or costs from any fund es-
14 tablished as part of the settlement, a statement indi-
15 cating which parties or counsel intend to make such
16 an application, the amount of fees and costs that
17 will be sought, and a brief explanation of the basis
18 for the application.

19 “(4) IDENTIFICATION OF REPRESENTATIVES.—
20 The name, telephone number, and address of one or
21 more representatives of counsel for the plaintiff class
22 who will be reasonably available to answer questions
23 from class members concerning any matter con-
24 tained in any notice of settlement published or oth-
25 erwise disseminated to class members.

1 “(5) OTHER INFORMATION.—Such other infor-
2 mation as may be required by the court.

3 “(o) CONTRIBUTION IN ACTIONS BROUGHT UNDER
4 SECTION 10(b).—

5 “(1) RIGHT TO CONTRIBUTION.—Any person
6 who becomes jointly and severally liable for damages
7 under section 10(b) of this title may recover con-
8 tribution.

9 “(2) SETTLEMENT DISCHARGE.—Any defend-
10 ant who, in good faith, settles an action brought
11 under section 10(b) of this title at any time before
12 verdict or judgment shall be discharged from all
13 claims for contribution brought by other persons.
14 Upon the determination by the court that the settle-
15 ment was entered into in good faith, the court shall
16 enter a bar order constituting the final discharge of
17 all obligations to the plaintiff of the settling defend-
18 ant arising out of the action. The order shall bar
19 both (A) future claims for contribution by
20 nonsettling persons against the settling defendant
21 and (B) future claims for contribution by the set-
22 tling defendant against any nonsettling defendants.

23 “(3) APPORTIONMENT OF LIABILITY.—Liability
24 shall be apportioned as follows:

1 “(A) In addition to determining the total
2 dollar amount of damages, the trier of fact shall
3 determine the percentage of responsibility for
4 those damages of each defendant (including de-
5 fendants who have entered into settlements with
6 the plaintiff). Where the trier of fact is a jury,
7 the court shall instruct the jury, in accordance
8 with the Federal Rules of Civil Procedure, to
9 answer interrogatories and prepare the appro-
10 priate forms for a verdict, specifically indicating
11 each defendant’s percentage of responsibility for
12 the damages.

13 “(B) If one or more defendants has or
14 have settled an action prior to verdict or judg-
15 ment, the remaining defendants as a whole
16 shall be jointly and severally liable for the per-
17 centage of damages allocated to them under
18 subparagraph (A).

19 “(C) The amount of contribution to which
20 a nonsettling defendant is entitled shall be no
21 more than the excess paid over and above such
22 defendant’s share as allocated in subparagraph
23 (A); except that no nonsettling defendant shall
24 be required to contribute an amount greater
25 than the unpaid portion, if any, of such defend-

1 ant's share as allocated in subparagraph (A),
 2 plus such defendant's proportionate share of
 3 any wholly uncollectible portion of another
 4 nonsettling defendant's share.

5 “(4) EFFECT ON PENDING ACTIONS.—This sub-
 6 section shall apply to all actions pending on or com-
 7 menced on or after the date of its enactment.

8 “(5) STATUTE OF LIMITATIONS.—Once judg-
 9 ment has been rendered in an action determining li-
 10 ability, no action for contribution may be brought
 11 after one year after that judgment becomes final.”.

12 **SEC. 102. SPECIAL REQUIREMENTS FOR CLASS ACTION**
 13 **COMPLAINTS; MULTIPLE SECURITIES CLASS**
 14 **ACTIONS; PROCEDURE FOR SELECTING LEAD**
 15 **COUNSEL IN CLASS ACTIONS; EARLY EVALUA-**
 16 **TION PROCEDURE.**

17 (a) SPECIAL REQUIREMENTS FOR CLASS ACTION
 18 COMPLAINTS.—The Securities Exchange Act of 1934 is
 19 amended by inserting after section 27A (15 U.S.C. 78aa–
 20 1) the following new section:

21 **“SEC. 27B. SPECIAL PROVISIONS FOR CLASS ACTIONS.**

22 “(a) CERTIFICATION OF COMPLAINTS.—

23 “(1) IN GENERAL.—In an implied private ac-
 24 tion arising under this title that is filed as a class
 25 action pursuant to the Federal Rules of Civil Proce-

1 dure, each plaintiff seeking to serve as a class rep-
2 resentative shall provide a certification personally
3 signed by the plaintiff to be filed with the complaint
4 that—

5 “(A) states that the plaintiff has reviewed
6 the complaint and authorized its filing;

7 “(B) states that the plaintiff did not pur-
8 chase the security that is the subject of the
9 complaint with the intent of commencing litiga-
10 tion;

11 “(C) states that the plaintiff did not pur-
12 chase the security that is the subject of the
13 complaint at the direction of plaintiff’s counsel;

14 “(D) states that the plaintiff is willing to
15 serve as a class representative, including provid-
16 ing testimony at deposition and trial, if nec-
17 essary;

18 “(E) sets forth all the plaintiffs’ trans-
19 actions in the security that is the subject of the
20 complaint during the class period specified in
21 the complaint;

22 “(F) identifies all suits under this title
23 which the plaintiff has filed as a class action in
24 the prior 12 months; and

1 “(G) states that the plaintiff will not ac-
2 cept any payment for serving as class represent-
3 ative beyond the plaintiff’s pro rata share of
4 any recovery, except as ordered by the court.

5 “(2) NON-WAIVER OF ATTORNEY-CLIENT PRIVI-
6 LEGE.—The certification filed pursuant to para-
7 graph (1) of this subsection shall not waive the at-
8 torney-client privilege.

9 “(b) MULTIPLE SECURITIES CLASS ACTIONS.—

10 “(1) IN GENERAL.—If more than one implied
11 private action arising under this title out of substan-
12 tially the same transaction or occurrence is filed in
13 one or more Federal courts, and any person or en-
14 tity is named as defendant in more than one such
15 action, each action shall be deemed a multiple secu-
16 rities class action, and the actions shall be deemed
17 a group of multiple securities class actions.

18 “(2) CONSOLIDATION.—The parties shall
19 promptly call to the attention of each court in which
20 multiple securities class actions are filed the other
21 actions in the group of multiple securities class ac-
22 tions. All the actions in the group of multiple securi-
23 ties class actions shall be transferred or consolidated
24 (or both) in the most convenient forum before one
25 judge as promptly as possible. The Judicial Panel on

1 Multi-District Litigation shall give expedited treat-
2 ment to proceedings involving multiple securities
3 class actions to facilitate their transfer to one dis-
4 trict as promptly as possible.

5 “(3) SELECTION OF LEAD COUNSEL.—When
6 multiple securities class actions are filed, plaintiffs’
7 counsel shall promptly organize themselves and se-
8 lect lead counsel to direct the prosecution of the ac-
9 tions, subject to the approval of the court. If plain-
10 tiffs’ counsel do not organize themselves, the court
11 shall promptly designate lead counsel, in no event
12 later than 45 days after the filing of the first mul-
13 tiple securities class action. In selecting or designat-
14 ing lead counsel, plaintiffs’ counsel and the court
15 shall not give undue weight to the order of filing the
16 multiple securities class actions.

17 “(4) LATER-FILED CASES.—Any multiple secu-
18 rities class action filed after the case organization
19 period shall be subject to the decisions taken during
20 the case organization period.

21 “(c) EARLY EVALUATION PROCEDURE.—

22 “(1) IN GENERAL.—In an implied private ac-
23 tion that is filed as a class action pursuant to the
24 Federal Rules of Civil Procedure, if the class rep-
25 resentatives and each of the other parties to the ac-

1 tion agree, and any party so requests, within 60
2 days after the filing of the class action, the court
3 shall order an early evaluation procedure. The period
4 of the early evaluation procedure shall not extend
5 beyond 150 days after the filing of the first com-
6 plaint subject to the procedure.

7 “(2) REQUIREMENTS.—During the early eval-
8 uation procedure—

9 “(A) defendants shall not be required to
10 answer or otherwise respond to any complaint;

11 “(B) plaintiffs may file a consolidated or
12 amended complaint at any time and may dis-
13 miss the action or actions at any time without
14 sanction;

15 “(C) unless otherwise ordered by the court,
16 no formal discovery shall occur, except that par-
17 ties may propound discovery requests to third
18 parties to preserve evidence, and upon receipt
19 of such a discovery request, a third party shall
20 not willfully destroy any documents, data com-
21 pilations (including any electronically stored
22 data) or tangible things that a reasonable per-
23 son would consider responsive to the discovery
24 request;

1 “(D) the parties shall evaluate the merits
2 of the action under the supervision of a person
3 (the ‘mediator’) (i) agreed upon by them, or (ii)
4 designated by the court in the absence of agree-
5 ment, which person may be another district
6 court judge, any magistrate-judge or a special
7 master; and each side shall have one peremp-
8 tory challenge of a mediator designated by the
9 court by filing a written notice of challenge
10 within five days of receipt of an order designat-
11 ing the mediator;

12 “(E) the parties shall promptly provide ac-
13 cess to or exchange all nonprivileged documents
14 relating to the allegations in the complaint or
15 complaints; and any documents withheld on the
16 grounds of privilege shall be sufficiently identi-
17 fied so as to permit the mediator to determine
18 if they are, in fact, privileged; and

19 “(F) the parties shall exchange damage
20 studies and such other expert reports as may be
21 helpful to an evaluation of the action on the
22 merits, which materials shall be treated as pre-
23 pared and used in the context of settlement ne-
24 gotiations.

1 “(3) FAILURE TO PRODUCE DOCUMENTS.—Any
2 party that fails to produce documents relevant to the
3 allegations of the complaint or complaints during the
4 early evaluation procedure may be sanctioned by the
5 court pursuant to the Federal Rules of Civil Proce-
6 dure. Notwithstanding paragraph (2) of this sub-
7 section, subject to review by the court, the mediator
8 shall have the authority to order the production of
9 evidence by any party and, to the extent necessary
10 properly to evaluate the case, may permit discovery
11 of nonparties and depositions of parties for good
12 cause shown.

13 “(4) EVALUATION BY THE MEDIATOR.—

14 “(A) IN GENERAL.—If, at the end of the
15 early evaluation procedure, the action has not
16 been voluntarily dismissed or settled, the medi-
17 ator shall evaluate the action as being:

18 “(i) clearly frivolous, such that it can
19 only be further maintained in bad faith; or

20 “(ii) clearly meritorious, such that it
21 can only be further defended in bad faith;
22 or

23 “(iii) described by neither clause (i)
24 nor clause (ii) of this subparagraph.

1 “(B) WRITTEN EVALUATION.—A written
2 evaluation with respect to the claims against
3 and defenses of each defendant shall be issued
4 within 10 days after the end of the early eval-
5 uation procedure and provided to the parties.
6 The evaluation shall not be admissible in the
7 action.

8 “(5) SANCTIONS.—If the action is evaluated
9 under paragraph (4)(A)(i) of this subsection and
10 final judgment is entered against the plaintiff, plain-
11 tiff or plaintiff’s counsel shall be liable to defendant
12 for sanctions as awarded by the court, if the court
13 agrees, based on the entire record, that the action
14 was frivolous when filed and maintained in bad
15 faith. If the action is evaluated under paragraph
16 (4)(A)(ii) of this subsection and final judgment is
17 entered against the defendant, defendant or defend-
18 ant’s counsel shall be liable to plaintiff for sanctions
19 as awarded by the court, if the court agrees, based
20 on the entire record, that the action was meritorious
21 and defended in bad faith.

22 “(6) EXTENSION OF EARLY EVALUATION PE-
23 RIOD.—The period of the early evaluation procedure
24 may be extended by stipulation of all parties. At the

1 conclusion of the period, the action shall proceed in
2 accordance with Federal Rules of Civil Procedure.

3 “(7) FEES.—Each side shall bear equally the
4 reasonable fees and expenses of the mediator if he
5 is not a judicial officer.”.

6 **SEC. 103. RESTORATION OF AIDING AND ABETTING LIABIL-**
7 **ITY.**

8 (a) SECURITIES ACT OF 1933.—Section 20 of the Se-
9 curities Act of 1933 (15 U.S.C. 77t) is amended by adding
10 at the end the following new subsection:

11 “(f) PROSECUTION OF PERSONS WHO AID OR ABET
12 VIOLATIONS.—For purposes of subsections (b) and (d),
13 any person who knowingly or recklessly provides substan-
14 tial assistance to another person in the violation of a provi-
15 sion of this title, or of any rule or regulation hereunder,
16 shall be deemed to violate such provision to the same ex-
17 tent as the person to whom such assistance is provided.
18 No person shall be liable under this subsection based on
19 an omission or failure to act unless such omission or fail-
20 ure constituted a breach of a duty owed by such person.”.

21 (b) SECURITIES EXCHANGE ACT OF 1934.—Section
22 20 of the Securities Exchange Act of 1934 (15 U.S.C. 78t)
23 is amended—

24 (1) by striking the heading of such section and
25 inserting the following:

1 “LIABILITY OF CONTROLLING PERSONS AND PERSONS
2 WHO AID OR ABET VIOLATIONS”; and

3 (2) by adding at the end the following new sub-
4 section:

5 “(e) PROSECUTION OF PERSONS WHO AID OR ABET
6 VIOLATIONS.—For purposes of subsections (d)(1) and
7 (d)(3) of section 21, or an action by a self-regulatory orga-
8 nization, or an express or implied private right of action
9 under this title, any person who knowingly or recklessly
10 provides substantial assistance to another person in the
11 violation of a provision of this title, or of any rule or regu-
12 lation thereunder, shall be deemed to violate such provi-
13 sion and shall be liable to the same extent as the person
14 to whom such assistance is provided. No person shall be
15 liable under this subsection based on an omission or fail-
16 ure to act unless such omission or failure constituted a
17 breach of a duty owed by such person.”.

18 (c) INVESTMENT COMPANY ACT OF 1940.—Section
19 42 of the Investment Company Act of 1940 (15 U.S.C.
20 80a–41) is amended by adding at the end the following
21 new subsection:

22 “(f) PROSECUTION OF PERSONS WHO AID OR ABET
23 VIOLATIONS.—For purposes of subsections (d) and (e),
24 any person who knowingly or recklessly provides substan-
25 tial assistance to another person in the violation of a provi-

1 sion of this title, or of any rule, regulation, or order here-
2 under, shall be deemed to violate such provision to the
3 same extent as the person to whom such assistance is pro-
4 vided. No person shall be liable under this subsection
5 based on an omission or failure to act unless such omission
6 or failure constituted a breach of a duty owed by such
7 person.”.

8 (d) INVESTMENT ADVISERS ACT OF 1940.—Section
9 209(d) of the Investment Advisers Act of 1940 (15 U.S.C.
10 80b–9) is amended—

11 (1) in subsection (d)—

12 (A) by striking “or that any person has
13 aided, abetted, counseled, commanded, induced,
14 or procured, is aiding, abetting, counseling,
15 commanding, inducing, or procuring, or is
16 about to aid, abet, counsel, command, induce,
17 or procure such a violation,”; and

18 (B) by striking “or in aiding, abetting,
19 counseling, commanding, inducing, or procuring
20 any such act or practice”; and

21 (2) by adding at the end the following new sub-
22 section:

23 “(f) PROSECUTION OF PERSONS WHO AID OR ABET
24 VIOLATIONS.—For purposes of subsections (d) and (e),
25 any person who knowingly or recklessly provides substan-

1 tial assistance to another person in the violation of a provi-
2 sion of this title, or of any rule, regulation, or order here-
3 under, shall be deemed to violate such provision to the
4 same extent as the person to whom such assistance is pro-
5 vided. No person shall be liable under this subsection
6 based on an omission or failure to act unless such omission
7 or failure constituted a breach of duty owed by such per-
8 son.”.

9 **SEC. 104. SAFE HARBOR FOR FORWARD-LOOKING STATE-**
10 **MENTS.**

11 (a) RULEMAKING.—Not later than 12 months after
12 the enactment of this Act, the Commission shall adopt
13 rules with respect to forward-looking statements concern-
14 ing the future economic performance of an issuer of secu-
15 rities registered under section 12 of the Act. Such rules
16 shall specify—

17 (1) the criteria the Commission determines to
18 be necessary and appropriate in the public interest
19 and for the protection of investors by which forward-
20 looking statements concerning the future economic
21 performance of an issuer of securities registered
22 under section 12 of the Act will be deemed not to
23 be in violation of section 10(b) of the Act; and

24 (2) the limits to liability for forward-looking
25 statements, and how such rules shall incorporate

1 and reflect the scienter requirements applicable to
2 implied private actions under section 10(b).

3 (b) REPORT.—Within 30 days following adoption of
4 the rules described in subsection (a), the Commission shall
5 submit a report to the House Committee on Commerce
6 and the Senate Committee on Banking describing the
7 rules the Commission has prescribed pursuant to sub-
8 section (a). Such report shall also—

9 (1) describe the procedures which shall be fol-
10 lowed for making a summary determination of the
11 applicability of any Commission rule for forward-
12 looking statements early in a judicial proceeding to
13 limit litigation and discovery and for promoting
14 timely dismissal of claims against such issuers of se-
15 curities based on such forward-looking statements if
16 such statements are in accordance with any rules
17 and regulations adopted by the Commission;

18 (2) what steps the Commission is undertaking
19 to provide clear guidance to issuers of securities and
20 the judiciary regarding the rules prescribed pursuant
21 to subsection (a); and

22 (3) any legislative recommendations relating to
23 forward-looking statements which the Commission
24 determines to be appropriate.

1 (c) SECURITIES EXCHANGE ACT AMENDMENT.—The
2 Securities and Exchange Act of 1934 (15 U.S.C. 78a et
3 seq.), is amended by adding at the end the following new
4 section:

5 **“SEC. 40. APPLICATION OF SAFE HARBOR FOR FORWARD-**
6 **LOOKING STATEMENTS.**

7 “(a) IN GENERAL.—In any implied private action
8 arising under this title that alleges that a forward-looking
9 statement concerning the future economic performance of
10 an issuer registered under section 12 was materially false
11 or misleading, if a party making a motion in accordance
12 with subsection (b) requests a stay of discovery concerning
13 the claims or defenses related to such statement of that
14 party, the court shall grant such a stay until it has ruled
15 on any such motion.

16 “(b) SUMMARY JUDGMENT MOTIONS.—Subsection
17 (a) shall apply to any motion for summary judgment made
18 by a defendant asserting that the forward-looking state-
19 ment was within the coverage of any rule which the Com-
20 mission may have adopted concerning such predictive
21 statements, if such motion is made not less than 60 days
22 after the plaintiff commences discovery in the action.

23 “(c) DILATORY CONDUCT; DUPLICATIVE DISCOV-
24 ERY.—Notwithstanding subsection (a) or (b), the time
25 permitted for a plaintiff to conduct discovery under sub-

1 section (b) may be extended, or a stay of the proceedings
2 may be denied, if the court finds that—

3 “(1) the defendant making a motion described
4 in subsection (b) engaged in dilatory or obstructive
5 conduct in taking or opposing any discovery; or

6 “(2) a stay of discovery pending a ruling on a
7 motion under subsection (b) would be substantially
8 unfair to the plaintiff or other parties to the ac-
9 tion.”.

10 **SEC. 105. LIMITATIONS PERIOD FOR IMPLIED PRIVATE**
11 **RIGHTS OF ACTION.**

12 The Securities Exchange Act of 1934 (15 U.S.C. 78a
13 et seq.) is amended by adding at the end the following
14 new section:

15 **“SEC. 37. LIMITATIONS PERIOD FOR IMPLIED PRIVATE**
16 **RIGHTS OF ACTION.**

17 “(a) IN GENERAL.—Except as otherwise provided in
18 this title, an implied private right of action arising under
19 this title shall be brought not later than the earlier of—

20 “(1) 5 years after the date on which the alleged
21 violation occurred; or

22 “(2) 3 years after the date on which the alleged
23 violation was discovered.

24 “(b) EFFECTIVE DATE.—The limitations period pro-
25 vided by this section shall apply to all proceedings pending

1 on or commenced after the date of enactment of this sec-
2 tion.”.

3 **SEC. 106. FINANCIAL FRAUD DETECTION AND DISCLOSURE.**

4 (a) AMENDMENTS TO THE SECURITIES EXCHANGE
5 ACT OF 1934.—The Securities Exchange Act of 1934 is
6 amended by inserting after section 13 (15 U.S.C. 78m)
7 the following new section:

8 **“SEC. 13A. FRAUD DETECTION AND DISCLOSURE.**

9 “(a) AUDIT REQUIREMENTS.—Each audit required
10 pursuant to this title of an issuer’s financial statements
11 by an independent public accountant shall include, in ac-
12 cordance with generally accepted auditing standards, as
13 may be modified or supplemented from time to time by
14 the Commission, the following:

15 “(1) procedures designed to provide reasonable
16 assurance of detecting illegal acts that would have a
17 direct and material effect on the determination of fi-
18 nancial statement amounts;

19 “(2) procedures designed to identify related
20 party transactions which are material to the finan-
21 cial statements or otherwise require disclosure there-
22 in; and

23 “(3) an evaluation of whether there is substan-
24 tial doubt about the issuer’s ability to continue as a
25 going concern over the ensuing fiscal year.

1 “(b) REQUIRED RESPONSE TO AUDIT DISCOV-
2 ERIES.—

3 “(1) INVESTIGATION AND REPORT TO MANAGE-
4 MENT.—If, in the course of conducting any audit
5 pursuant to this title to which subsection (a) applies,
6 the independent public accountant detects or other-
7 wise becomes aware of information indicating that
8 an illegal act (whether or not perceived to have a
9 material effect on the issuer’s financial statements)
10 has or may have occurred, the accountant shall, in
11 accordance with generally accepted auditing stand-
12 ards, as may be modified or supplemented from time
13 to time by the Commission—

14 “(A)(i) determine whether it is likely that
15 an illegal act has occurred, and (ii) if so, deter-
16 mine and consider the possible effect of the ille-
17 gal act on the financial statements of the is-
18 suer, including any contingent monetary effects,
19 such as fines, penalties, and damages; and

20 “(B) as soon as practicable inform the ap-
21 propriate level of the issuer’s management and
22 assure that the issuer’s audit committee, or the
23 issuer’s board of directors in the absence of
24 such a committee, is adequately informed with
25 respect to illegal acts that have been detected or

1 otherwise come to the attention of such ac-
2 countant in the course of the audit, unless the
3 illegal act is clearly inconsequential.

4 “(2) RESPONSE TO FAILURE TO TAKE REME-
5 DIAL ACTION.—If, having first assured itself that
6 the audit committee of the board of directors of the
7 issuer or the board (in the absence of an audit com-
8 mittee) is adequately informed with respect to illegal
9 acts that have been detected or otherwise come to
10 the accountant’s attention in the course of such ac-
11 countant’s audit, the independent public accountant
12 concludes that—

13 “(A) any such illegal act has a material ef-
14 fect on the financial statements of the issuer,

15 “(B) senior management has not taken,
16 and the board of directors has not caused sen-
17 ior management to take, timely and appropriate
18 remedial actions with respect to such illegal act,
19 and

20 “(C) the failure to take remedial action is
21 reasonably expected to warrant departure from
22 a standard auditor’s report, when made, or
23 warrant resignation from the audit engagement,

1 the independent public accountant shall, as soon as
2 practicable, directly report its conclusions to the
3 board of directors.

4 “(3) NOTICE TO COMMISSION; RESPONSE TO
5 FAILURE TO NOTIFY.—An issuer whose board of di-
6 rectors has received a report pursuant to paragraph
7 (2) shall inform the Commission by notice within
8 one business day of receipt of such report and shall
9 furnish the independent public accountant making
10 such report with a copy of the notice furnished the
11 Commission. If the independent public accountant
12 making such report shall fail to receive a copy of
13 such notice within the required one-business-day pe-
14 riod, the independent public accountant shall—

15 “(A) resign from the engagement; or

16 “(B) furnish to the Commission a copy of
17 its report (or the documentation of any oral re-
18 port given) within the next business day follow-
19 ing such failure to receive notice.

20 “(4) REPORT AFTER RESIGNATION.—An inde-
21 pendent public accountant electing resignation shall,
22 within the one business day following a failure by an
23 issuer to notify the Commission under paragraph
24 (3), furnish to the Commission a copy of the ac-

1 countant’s report (or the documentation of any oral
2 report given).

3 “(c) AUDITOR LIABILITY LIMITATION.—No inde-
4 pendent public accountant shall be liable in a private ac-
5 tion for any finding, conclusion, or statement expressed
6 in a report made pursuant to paragraph (3) or (4) of sub-
7 section (b), including any rules promulgated pursuant
8 thereto.

9 “(d) CIVIL PENALTIES IN CEASE-AND-DESIST PRO-
10 CEEDINGS.—If the Commission finds, after notice and op-
11 portunity for hearing in a proceeding instituted pursuant
12 to section 21C of this title, that an independent public
13 accountant has willfully violated paragraph (3) or (4) of
14 subsection (b) of this section, then the Commission may,
15 in addition to entering an order under section 21C, impose
16 a civil penalty against the independent public accountant
17 and any other person that the Commission finds was a
18 cause of such violation. The determination whether to im-
19 pose a civil penalty, and the amount of any such penalty,
20 shall be governed by the standards set forth in section 21B
21 of this title.

22 “(e) PRESERVATION OF EXISTING AUTHORITY.—Ex-
23 cept for subsection (d), nothing in this section limits or
24 otherwise affects the authority of the Commission under
25 this title.

1 “(f) DEFINITIONS.—As used in this section, the term
 2 ‘illegal act’ means any action or omission to act that vio-
 3 lates any law, or any rule or regulation having the force
 4 of law.”.

5 (b) EFFECTIVE DATES.—As to any registrant that
 6 is required to file selected quarterly financial data pursu-
 7 ant to item 302(a) of Regulation S-K (17 CFR
 8 229.302(a)) of the Securities and Exchange Commission,
 9 the amendments made by subsection (a) of this section
 10 shall apply to any annual report for any period beginning
 11 on or after January 1, 1996. As to any other registrant,
 12 such amendment shall apply for any period beginning on
 13 or after January 1, 1997.

14 **TITLE II—COMMISSION PRIVATE** 15 **ENFORCEMENT STUDY**

16 **SEC. 201. FILING OF MATERIALS WITH THE COMMISSION.**

17 (a) COMMISSION NOTIFICATION.—Section 21 of the
 18 Securities Exchange Act of 1934 (15 U.S.C.) is further
 19 amended by adding at the end the following new sub-
 20 section:

21 “(p) COMMISSION NOTIFICATION.—

22 “(1) An attorney filing a complaint or an
 23 amended complaint in an implied private action aris-
 24 ing under this title that is filed as a class action
 25 pursuant to the Federal Rules of Civil Procedure

1 shall promptly provide the Commission with a copy
2 of such complaint. Any party filing a dispositive mo-
3 tion or an opposition to a dispositive motion in such
4 an action shall promptly provide the Commission
5 with a copy of the motion or opposition together
6 with any supporting declaratory affidavits, exhibits
7 or similar materials. Counsel for the plaintiff shall
8 provide the Commission with copies of all orders on
9 dispositive motions.

10 “(2) No confidentiality order issued pursuant to
11 section 21(k) of this title shall limit the information
12 required to be filed with the Commission pursuant
13 to paragraph (1).

14 “(3) The Commission may file an enforcement
15 action or take such other action as it deems appro-
16 priate based upon the submissions that it receives
17 pursuant to this paragraph.”.

18 **SEC. 202. COMMISSION PRIVATE ENFORCEMENT STUDY.**

19 (a) COMMISSION PRIVATE ENFORCEMENT STUDY.—
20 Not later than five years after the date of enactment of
21 this section, the Commission shall submit to Congress a
22 report:

23 (1) listing each implied private action arising
24 under this title that has been filed as a class action
25 pursuant to the Federal Rules of Civil Procedure for

1 which the Commission has received notification pur-
2 suant to section 201 of this Act;

3 (2) identifying which actions were consolidated,
4 dismissed, tried, settled, or remain pending;

5 (3) identifying such causes of action and mo-
6 tions that were found by the court to be clearly un-
7 warranted, if any;

8 (4) in actions that were tried or settled, describ-
9 ing the participation of each defendant in the judg-
10 ment or settlement;

11 (5) describing the extent to which accountants,
12 attorneys, and other professionals participated in the
13 conduct underlying the claims asserted;

14 (6) identifying which actions were based solely
15 on forward-looking statements;

16 (7) identifying which actions alleged significant
17 transactions in the issuer's securities by corporate
18 officers, directors, or controlling shareholders during
19 the period of alleged deception; and

20 (8) proposing such legislative, administrative
21 and budgetary recommendations as may be nec-
22 essary to effectuate the purposes of this title.

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HR 555 IH—2

HR 555 IH—3